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FEDERAL COMMUNICATIONS COMMISSION
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Ms. Kathleen Wallman
Chief of Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, NW
Washington, DC 20554

Dear Kathy:

Thank you for meeting with us on September 13. In preparation for our meeting on Monday, September 19, I will try to recap the points you presented to us on the "going forward" issues and provide comments on each point.

1. CHANNEL ADJUSTMENT TO EXISTING TIERS: The FCC is considering a proposal which will provide a per-channel markup for adding new services to an existing regulated tier. In addition, there would be an annual overall cap for adding channels to a regulated tier. This cap would include both programming costs plus per-channel markup. The annual per-channel markup would be limited via a percentage of the annual cap. An operator could effectively "borrow" from the markup allowance but could not borrow from the programming costs. The example used was a $1.50 total cap; a 25¢ per channel markup allocation with a 75¢ markup cap.

The annual cap, however, does not cover inflation or other rate increases resulting from increases in programming or governmentally-imposed costs.

In our opinion, the concept of the formula for adding services to regulated tiers is acceptable. However, the acceptance of such a concept obviously will depend on the actual numbers utilized. It is Newhouse's view that unless the per-channel markup is 25¢ and the annual cap is $1.50, many operators will not add channels to existing regulated tiers. Even under the numbers you hypothetically used, it is not likely that a cable operator would voluntarily add more than three new channels to an existing regulated tier in any year. If the permitted markup is exhausted, most operators will not voluntarily add more channels if all that can be recovered is their programming cost.

We think clarification of the following is vital:

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· This channel adjustment formula is not limited to new services but may be used to move existing services from a la carte or "forbearance" tiers to the regulated basic service tier (BST) or cable service tier (CST).

· The FCC must reconfirm that the addition of services to the BST and CST must be exempt from negative option at the local, state and federal levels.

· The addition of services to CST, with the permissible rate increase, does not put the whole CST rate in play.

· Existing services on the BST or CST may be dropped completely or migrated to a "forbearance" tier or a la carte package by reducing the BST or CST rate by the same formula (markup + programming cost). If a new service is substituted on the BST or CST for the migrated service, the substituted channel should be eligible for the markup and programming cost increases. However, the permissible increases for the substituted channel should not count against the annual cap since this is simply a substitution of services and not the overall addition of services.

· Operator should be allowed to incubate a new service or BST or CST for a reasonable period of time.

2. FORBEARANCE: The FCC is also considering an option for a cable operator to implement a new tier without regulation; however, as a condition, its current BST and CST service must be "preserved" under the proposal. As we understand the FCC's proposal, an operator would "preserve" within limits, yet to be defined, on increasing, decreasing, or "migrating" services from the BST or CST. Services could migrate if they were "cloned" (meaning duplicated on both the CST and new services tier) or "incubated" (meaning added to the BST or CST for a period of time for introductory and marketing purposes) and then only after a fixed date.

If the operator chose the forbearance option, new services could be added to a new, distinct "unregulated" tier or tiers. This would provide the operator with a "safe harbor," subject only to a decision by the FCC to no longer forbear from regulation. This tier would not offer a la carte choices or options. The FCC would have the option to regulate (withdraw forbearance) if it felt this provision was being abused by the operator.

This forbearance approach offers an encouraging and viable alternative to provide programming on new tiers and, in this regard, we seek the following clarifications and make certain suggestions:

· Cable operators should be allowed to add services to the BST or CST using the criteria set forth in "Channel Adjustment" described above and still not violate the "preservation" requirement. If the cable operator stays within the permissible cap for adding channels to the BST or CST regulated tiers, then the "forbearance" tier should not be foreclosed as an appropriate place to add other services providing different options and maximizing consumer choice.

· The cable operator must be able to make some changes, apart from additions, to the channels on the regulated BST and CST levels without disregarding the requirement of "preservation" of such service levels. Currently, the FCC utilizes the concept of a change in the fundamental nature of a tier in the context of negative options. Such a concept of fundamental change also seems appropriate applied here as well.

· Rates to BST and CST are not frozen as a condition to the "preservation" approach. Annual increases could be limited to (1) the addition of new services at some level less than the permissible annual cap and, (2) the pass-throughs of inflation, governmentally-imposed cost increases, and programming cost increases.

· If the FCC establishes the principle of forbearance by rule, we believe any removal of such a rule should be on a system-by-system basis that allows the FCC to regulate only bad actors and not the whole industry.

· Discounts must be allowed if the consumer chooses a la carte service, premium services or multiple "forbearance" tiers.

· Additions of new services to the "forbearance" tier must be exempt from negative option at the local, state and federal level.

3. A LA CARTE: We understood that a cable operator can establish a new a la carte package when the same channels are available on a per-channel basis. In this instance, the operator can choose between the "safe harbor" of forbearance or to be judged, instead, by the 15 standards. It is our position that it is both impermissible and unwise to take jurisdiction over all a la carte packages, which may include premium and/or other cable services, if such channels are truly available on a per-channel basis. We understand that an operator who chooses to be judged by the a la carte standards has no prohibition on migration of channels to a discounted a la carte package. In addition, channels can always be migrated if (1) offered only in a per-channel format, (2) previously incubated, and (3) "cloned" from a regulated or "forbearance" tier. We have further questions and suggestions:

· It is critical that operators can establish new a la carte packages and have these packages included within the safe harbor of "forbearance," or choose to have their new a la carte packages governed by the 15 standards.

· In determining whether a channel is migrated, channels taken from a tier, other than BST and the most popular CST tier, should not be counted as "migrated" if such tier has been affirmatively marketed.

· Without knowledge of the meaning of the 15 standards, cable operators' right to choose between the forbearance and 15 standard alternatives is meaningless.

· What happens to the operator who chooses the 15 standards and loses? Where do the new services go? Where do any migrated services go? To forbearance or fully-regulated status?

4. UPGRADES: We agree that a rebuild incentive is crucial for those systems that implement the information highway at such time as such capacity is "lit up" when new programming is added. However, we believe that those systems that have accomplished this objective and activated the channels in the past should not be punished or rendered ineligible for the incentives. We also believe that system upgrades and rebuilds will benefit all subscribers receiving service--not just the new channels but also existing regulated channels with improved service. Thus, a portion of the rebuild costs should be passed on to all subscribers. In order to include existing high-capacity systems and encourage future upgrades, we suggest the implementation of the following format:

· A reasonable starting date for instituting the incentive should be established as well as a reasonable end date to qualify for such incentives.

· Systems capable of transmitting to the consumer:

	450 MGH	550 MGH	750 MGH
per month supplemental incentive for each regulated channel carried as of 12/31/93	1¢	1½¢	2¢
per month supplemental incentive for each additional regulated channel after 12/31/93	2¢	4¢	5¢

This accomplishes several purposes:

· Present upgraded systems are not unfairly denied the benefits of the incentive plan.

· The varied capacity approach provides an incentive for not only the large system operator but also the small and medium-sized system and for systems that are upgrading and rebuilding in logical stages.

We appreciate the opportunity you have given us to respond to these new proposals under consideration. We recognize the task of regulating the cable industry has been most difficult and certainly not without great controversy. It is Newhouse's intent to be constructive in its comments to the proposal you have outlined. We remain concerned, however, that the original goal of the law of bringing the minority of "bad actors" under control captured many of the "good actors," including Newhouse. We hope that our response will assist in preventing this from occurring again in the "going forward" and rebuild incentive rules.

I look forward to further discussing the above on Monday, September 19.

Cordially,

Robert Miron
President

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